IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7008 OF 2007

Maratha Mandal Charitable Trust
Ichalkaranji, through Chairman
Bandopant Ishwara Lad and Ors ...Petitioners

Versus

Shri Balasaheb Tatoba Belekar
and Ors. ....Respondents

R.G.Ketkar, i/by.Archana B.Kololgi for the petitioners.
A.M.Kulkarni for respondent no.1.
T.S.Ingale fo respondent no.3.

CORAM: S.C.DHARMADHIKARI, J.

4th December, 2007.

P.C. :

1. This petition is challenging an order passed by the Civil Judge, Junior Division, Ichalkaranji on 5.1.2007, below Exhibit-5 in Regular Civil Suit No. 348 of 2006. That order is confirmed in Misc.Civil

Appeal No. 2 of 2007 by the District Judge, Ichalkaranji.

2. The original plaintiff filed a suit in the Trial Court and has applied for the following relief:- "That defendant nos.1 to 14 or anybody claiming though them should not carry out any unauthorised construction on the suit property which is described in prayer clause 1(a) and 1(b) of the plaint." A mandatory injunction has been claimed with regard to the alleged unauthorised construction which is already carried out according to the original plaintiff.

3. The present petitioners are the defendants to the suit. It is their case, that the original plaintiff has filed a suit after being fully aware of the fact that a Resolution of the trust, to which he is a party speaks of the present construction and that being a party to the said Resolution he could not have challenged the construction activity.

4. Further the construction activity is carried out with the permission of Ichalkaranji Municipal

Council and reference is made by Mr.Ketkar to letters dated 24.4.1970, 11.2.1974 and 22.12.1980. He has also invited my attention to a construction permission granted on 31.8.1989.

5. Considering the prayers in the plaint and the injunction application, copy of which is annexed at pages 52 and 53, the injunction as granted by the Trial Court prohibits the petitioners from putting up any construction which is not permitted by the Municipal council. One of the issues at the prima-facie stage was whether the permission is granted or whether the the permission already granted enures for the benefit of the present petitioners.

6. The Trial Court has recorded in para-5 of its order that the Municipal Council is a party defendant and has supported the case of the plaintiff to some extent. Para-5 of the order passed reads thus :-

> "5. The Defendant no.15-Municipality has filed it's say at Exh.44 and have supported the petition to some extent. As per their contention, they have issued construction permission under the provisions of Maharashtra Municipal Council Nagar Panchayat and Industrial Township Act, 1965. He further

contends that the Municipality used to issue construction permission under M.R.T.P., Act also. Both permissions are similar be termed as construction commencing certificate. the permission under both Act lapses on expiration of one year period since the date of issuance if the holder thereof failed to start the work of construction. However, they contended that the provisions of Act are silent about concluding period of construction, if it was started within one year period since the issuance of permission. At the same time they further contend that irrespective of such provisions it will have to be completed within reasonable time. they also issued about initiating legal action in case if court directs for the same holding that proposed construction is unauthorized or illegal one. Consequently, they pray for rejection of the petition.

7. In my view, it is not necessary to enter into any larger controversy, inasmuch as, the argument of Mr. Ketkar appearing for the petitioners is that if the construction permission is granted and the construction activity commences within the period stipulated therein, then, it is not incumbent upon the parties to complete the construction. There is no outer limit to complete the construction. He submits that such an construction cannot be termed as unauthorised.

8. In my view, the findings recorded are tentative and prima-facie. If the petitioners can convince the municipal council even now by approaching it and if the Corporation clarifies the entire matter with regard to the construction at site, then, it would be open for the petitioners to apply in the Trial Court for modification and/or variation of the interim order based on the subsequent developments. The trial court to consider the developments and circumstances then prevailing and dispose off such an application as expeditiously as possible.

9. For the time being, it is clarified that the injunction should be construed as restraining the present petitioners from carrying out any construction which is illegal and not permitted by the local municipal council.

10. Petition stands disposed off with the above clarifications. No costs.

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